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No. 99-1112

Supreme Court, U.S.
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CLERK

IN THE

Supreme Court of the United States

THOMAS MILLER, Attorney General of the State of Iowa, in his official capacity,

Petitioner,

—v.—

PLANNED PARENTHOOD OF GREATER IOWA, INC.; SUE HASKELL, D.O.; and PAULA R. MAHONE, M.D., on behalf of themselves and their patients; JENNIFER NIEBYL, M.D.; NOELLE C. BOWDLER, M.D.; SONYA ERICKSON, M.D.; SUSAN JOHNSON, M.D.; ANN LAROS, M.D.; AMBRE OLSEN, M.D.; INGRID NYGAARD, M.D.; JOEL I. SOROSKY, M.D.; CRAIG SYROP, M.D.; BRADLEY J. VAN VOORHIS, M.D.; ROBERT KRETZSCHMAR, M.D.; and VERONIKA E.B. KOLDER, M.D., on behalf of themselves and their patients; and EMMA GOLDMAN CLINIC FOR WOMEN, INC., on behalf of its patients, its staff and itself,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Iowa "partial-birth abortion" statute is unconstitutional under this Court's decisions in *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976), *Thornburgh v. ACOG*, 476 U.S. 747 (1986), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), because it bans a broad range of abortion procedures, including the safest methods of second-trimester abortion available in Iowa, without regard to fetal viability and without any exception for the woman's health?

2. Whether the court of appeals properly declined to narrow the scope of the Iowa "partial-birth abortion" statute because doing so would have required the court to rewrite the law in a manner rejected by the Iowa legislature, and because such a narrowing construction would not cure its constitutional deficiencies?

LIST OF PARTIES

All the parties to his proceeding are listed on the caption to the Petition for Writ of Certiorari, except for respondent Rebecca Shaw, M.D.

The Emma Goldman Clinic for Women is the only respondent represented by the undersigned counsel that is a corporation. It is a non-profit corporation and has neither a parent corporation, nor nonwholly owned subsidiaries.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 195 F.3d 386 (8th Cir. 1999).

REASONS TO DEFER CONSIDERATION OF THE PETITION

Given that this Court recently granted Nebraska's petition for a writ of certiorari to review a statute banning "partial birth abortion" that is virtually identical to the statute at issue in this case, *Carhart v. Stenberg*, No. 99-830, *pet. for cert. granted* (U.S. Jan. 14, 2000), and even though the record in this case differs somewhat from the record in *Carhart*, *see* Opposition to Petition for Writ of Certiorari, at 3-9, filed by Planned Parenthood Plaintiffs-Respondents in *Miller v. Planned Parenthood of Greater Iowa,* No. 99-1112, dated Jan. 11, 2000,[2] the Respondents in *Miller v. Niebyl,*

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[1] Plaintiffs-respondents in *Miller v. Planned Parenthood*, the case consolidated with this one by the district court, are separately represented and submitted a separate response to the Iowa Attorney General's petition. *See* Opposition to Petition for Writ of Certiorari, filed by Planned Parenthood Plaintiffs-Respondents in *Miller v. Planned Parenthood of Greater Iowa,* No. 99-1112, dated Jan. 11, 2000.

[2] The record in this case also differs from that in *Carhart* because of the specialized practices of the Plaintiffs-Respondents in *Miller v. Niebyl*, who include Susan Johnson, M.D., Associate Dean for Faculty Affairs at

respectfully submit that this Court should defer consideration of the petition for a writ of certiorari filed by the State of Iowa until after the Court's decision in *Carhart* is issued. The Respondents further respectfully submit that they should be given an opportunity to respond to the State of Iowa's Petition in this case in light of this Court's eventual decision in *Carhart*.

CONCLUSION

For all the foregoing reasons, consideration of the petition for a writ of certiorari should be deferred, and Respondents should be granted an opportunity to respond to

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the University of Iowa College of Medicine, Jennifer Niebyl, M.D., head of the Department of Obstetrics and Gynecology at the University of Iowa College of Medicine, and eight other members of that Department. The Department is widely known for having one of the top Obstetrics and Gynecology Residency programs in the United States. Many members of the Department perform and teach abortion procedures proscribed by the statute at issue in this case.

the Petition in light of this Court's decision in *Carhart* after the Court issues its decision in that case.

Respectfully submitted,

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Dated: Thursday, January 20, 2000.